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No. 99-224

In the Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
Petitioners,

v.

RICHARD A. FRENCH, *et al.*
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

AMICUS CURIAE BRIEF OF TEXAS, ALABAMA, ALASKA, ARKANSAS, CALIFORNIA, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, ILLINOIS, KANSAS, MARYLAND, MICHIGAN, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, OHIO, OKLAHOMA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WASHINGTON, AND WYOMING IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Table of Contents iii

Table of Authorities iv

Interest of *Amici Curiae* 1

Summary of the Argument 1

Argument 3

I. District Courts Do Not Have Inherent Equitable Powers to Stay a Congressionally Imposed Automatic Stay of Prospective Relief. 7

II. The Automatic Stay Provision Does Not Violate Separation of Powers. 14

Conclusion 23

TABLE OF AUTHORITIES

CASES:

Benjamin v. Jacobson, 172 F.3d 144 (2d Cir.)(en banc), *cert. denied sub nom. Benjamin v. Kerik*, 120 S. Ct. 72 (1999) 15
Board of Educ. v. Dowell, 498 U.S. 237 (1991) 3
Brown v. Swann, 35 U.S. (10 Pet.) 497 (1836) 8
Cagle v. Hutto, 177 F.3d 253 (CA4 1999) 15
Califano v. Yamasaki, 442 U.S. 682 (1979) 8
Chambers v. NASCO, Inc., 501 U.S. 32 (1991) 7
Cinerama, Inc. v. Sweet Music, S.A., 482 F.2d 66 (CA2 1973) 19
Crowell v. Benson, 285 U.S. 22 (1932) 11
Dougan v. Singletary, 129 F.3d 1424 (CA11 1997), *cert. denied*, 118 S. Ct. 2375 (1998) 16
Freeman v. Pitts, 503 U.S. 467, 112 S.Ct. 1430 (1992) .. 3
French v. Duckworth, 178 F.3d 437 (CA7 1999) ..... *passim*
Gavin v. Branstad, 122 F.3d 1081 (CA8 1997), *cert. denied*, 118 S. Ct. 2374 (1998) 3, 16
Hadix v. Johnson, 133 F.3d 940 (CA6), *cert. denied sub nom. Hadix v. McGinnis*, 118 S. Ct. 2368 (1998) 13, 16
Hadix v. Johnson, 144 F.3d 925 (CA6 1998) 9, 10, 12
Hadix v. Johnson, 933 F.Supp. 1360 (E.D. Mich. 1996) 12
Hadix v. Johnson, 933 F.Supp. 1362 (W.D. Mich. 1996) 12
Hebert v. Exxon Corp., 953 F.2d 936, 938 (CA5 1992) . 19
Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (CA3 1999) 15-16

Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (CA1 1997) 16
In re Guthrie, 733 F.2d 634 (CA4 1984) 19
Kalb v. Feuerstein, 308 U.S. 433 (1940) 19
Lauf v. Shinner, 303 U.S. 323 (1938) 7
Lewis v. Casey, 518 U.S. 343 (1996) 5, 6
Lowe v. SEC, 472 U.S. 181 (1985) 11
Milliken v. Bradley, 433 U.S. 267 (1977) 15
New York v. United States, 505 U.S. 144 (1992) 4
Nichols v. Hopper, 173 F.3d 820 (CA11 1999) 15
NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) 10
Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855) 17
Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995) 17
Plyler v. Moore, 100 F.3d 365 (CA4 1996) 4, 14, 16
Porter v. Warner Holding Co., 328 U.S. 395 (1946) 8
Preiser v. Rodriguez, 411 U.S. 475 (1973) 5
Procunier v. Martinez, 416 U.S. 396 (1974), *overruled on other grounds, Thornburgh v. Abbott*, 490 U.S. 401 (1989) 1, 3
Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992) 17
Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 15
Ruiz v. Johnson, 178 F.3d 385 (CA5 1999) 9-10
Stefanelli v. Minard, 342 U.S. 117 (1951) 8
Taylor v. United States, 143 F.3d 1178 (CA9), *reh'g granted and opinion withdrawn*, 158 F.3d 1059 (CA9

1999) (en banc), *on reh'g*, 181 F.3d 1017 (CA9 1999) (en banc) 16
Toucey v. New York Life Ins. Co., 314 U.S. 118 (1941) 7
United States v. Bramer, 691 F.2d 691 (CA4 1982) 20
United States v. Klein, 80 U.S. (13 Wall.) 128 (1872) 16, 17
United States v. Lopez, 514 U.S. 549 (1995) 4
Yu Cong Eng'g v. Trinidad, 271 U.S. 500 (1927) 11

STATUTES:

11 U.S.C. §362 18
18 U.S.C. §3161 20
18 U.S.C. §3162(a)(2) 20
18 U.S.C. §3626(b) ..... *passim*
18 U.S.C. §3626(e) ..... *passim*
28 U.S.C. §1292(a)(1) 12
28 U.S.C. §1826(b) 20
28 U.S.C. §2072 19
28 U.S.C. §2244(b)(3)(D) 20
Judiciary Act of 1793, §5, 1 Stat. 335 7

RULES:

FED. R. CIV. P. 62 19
FED. R. CIV. P. 65(b) 7, 19-20

OTHER AUTHORITIES:

141 CONG. REC. H14,106 (daily ed. Dec. 6, 1995) 4
141 CONG. REC. S14, 418 (daily ed. Sept. 27, 1995) 4
143 CONG. REC. S12,268 (daily ed. Nov. 9, 1997) 4
143 CONG. REC. S12,269 (daily ed. Nov. 9, 1997) 6, 13, 17

DOUGLAS LAYCOCK, MODERN AMERICAN REMEDIES 307 (2d ed. 1994) 22
H.R. REP. NO. 21, 104th Cong., 1st Sess. (1995) 4, 6
John Choon Yoo, *Who Measures the Chancellor's Foot? The Inherent Remedial Authority of Federal Courts*, 84 CALIF. L. REV. 1121 (1996) 2
Prison Reform: Enhancing the Effectiveness of Incarceration: Hearings on S. 3, S. 38, S. 400, S. 866, S. 930, and H.R. 667 Before the Committee on the Judiciary, 104th Cong., 1st Sess. 2 (1996) 3

INTEREST OF *AMICI CURIAE*

Amici curiae Texas, *et al.*, urge the Court to reverse the judgment of the Seventh Circuit. The Court has long recognized that the problems facing prisons and jails "are complex and intractable" and "require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of" state corrections professionals.[1] The states have a strong interest in retaining—or in many cases, regaining—control over their own penal institutions in the absence of a clear constitutional violation.

SUMMARY OF THE ARGUMENT

Congress passed the Prison Litigation Reform Act in response to its perception that some federal district courts had too long been overseeing state and local penal institutions without clear evidence that federal control was necessary to remedy ongoing constitutional violations. Even when the original intrusion was justified by evidence of constitutional violations, the remedial orders sometimes remained in place more than two decades later—partly because the states and their prison systems were hesitant to move for termination—and long after the conditions that precipitated the case ceased to exist. The PLRA reflects Congress's "growing frustration with the courts' inability to control their

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1. *Procunier v. Martinez*, 416 U.S. 396, 405 (1974), *overruled on other grounds*, *Thornburgh v. Abbott*, 490 U.S. 401 (1989).

own remedial discretion in a principled manner."[2] It attempts to balance federal judicial encroachments with the principles of federalism by setting substantive requirements for new and continued federal judicial relief against state prisons and jails. The PLRA encourages state and local governments (and a variety of prospective intervenors) to move to terminate any existing relief that does not meet the substantive standards of the PLRA. If a court fails to rule on a motion to terminate within 30 (or, with good cause, 90) days, all pending prospective relief is automatically stayed until the court rules on the motion.

Congress believed that some courts could delay implementation of the substantive requirements of the PLRA, and Congress enacted the automatic stay provision to encourage courts to rule quickly on termination motions. The language of the PLRA was not intended to and does not leave courts equitable authority to "stay the stay." Congress has the power to modify courts' inherent equitable authority, and the language of the statute cannot reasonably be construed to permit district courts to disregard the stay.

Nor does the automatic stay violate separation of powers. It is a valid congressional enactment that properly limits the equitable powers of federal courts, and the Seventh Circuit erred in ruling to the contrary.

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2. John Choon Yoo, *Who Measures the Chancellor's Foot? The Inherent Remedial Authority of Federal Courts*, 84 CALIF. L. REV. 1121, 1175 (1996).

ARGUMENT

When Congress passed the PLRA in 1996, it intended the new statute, 18 U.S.C. §3626, to govern prison-conditions litigation. The PLRA reflects "Congress' desire to get the federal courts out of the business of administering prisons, except where court action is necessary to remedy actual violations of prisoners' constitutional rights," *Gavin v. Branstad*, 122 F.3d 1081, 1090 (CA8 1997), and echoes the Supreme Court's admonition that institutional consent decrees "are not intended to operate in perpetuity." *Board of Educ. v. Dowell*, 498 U.S. 237, 248 (1991). When a state has remedied the constitutional violations that the court order identifies, the district court has a categorical obligation to return control of the institution to the state officials responsible for its operation. *Freeman v. Pitts*, 503 U.S. 467, 491 (1992); *see Dowell*, 498 U.S. at 248. "Courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform." *Procunier*, 416 U.S. at 405. The legislative history of the PLRA forcefully demonstrates that Congress was seriously concerned about perceived abuses stemming from continued federal court control of state prisons.[3]

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3. *See Prison Reform: Enhancing the Effectiveness of Incarceration: Hearings on S. 3, S. 38, S. 400, S. 866, S. 930, and H.R. 667 Before the Committee on the Judiciary*, 104th Cong., 1st Sess. 2 (1996) (statement of Sen. Hatch) ("Our prison system today is plagued by several interrelated problems—the inappropriate utilization by Federal courts of population caps and intrusive micromanagement on State and local prisons . . . ."); *id.* at 11 (statement of Sen. Hutchison) ("My purpose in appearing today is to impress on the committee the seriousness of the problem of Federal court takeovers and to describe the

Congress enacted the PLRA to protect the states' Tenth Amendment and Guarantee Clause sovereignty. *See* 143 CONG. REC. S12,268 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) ("The Prison Litigation Reform Act was specifically designed to protect the Tenth Amendment powers of the sovereign states, to enforce the Guarantee Clause, and to preserve and strengthen key structural elements of the United States Constitution such as separation of powers, judicial review, and federalism."); *see also United States v. Lopez*, 514 U.S. 549, 574-76 (1995) (Kennedy, J., concurring); *New York v. United States*, 505 U.S. 144, 156-59 (1992). District courts too often had entered injunctive relief against state prison systems and facilities without specific findings of a violation of federal law and frequently continued that injunctive relief long after the state brought its practices into compliance. Congress rightly believed that many district courts were not properly observing the limits on their equitable authority imposed by principles of federalism and separation of powers. *See Plyler v. Moore*, 100 F.3d 365, 374 (CA4 1996) ("Congress has a legitimate interest in preserving state sovereignty by protecting states from overzealous supervision by the federal courts in the area of prison conditions litigation.").

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tremendous costs, financial and societal, that the courts' actions are imposing on our States."); *see also* H.R. REP. NO. 21, 104th Cong., 1st Sess. 9 (1995); *id.* at 24 n.1; 141 CONG. REC. H14,106 (daily ed. Dec. 6, 1995) (statement of Rep. Canady); 141 CONG. REC. S14,418 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch).

> "Principles of federalism and separation of powers impose stringent limitations on the equitable power of federal courts. When these principles are accorded their proper respect, Article III cannot be understood to authorize the Federal Judiciary to take control of core state institutions like prisons, schools, and hospitals, and assume responsibility for making the difficult policy judgments that state officials are both constitutionally entitled and uniquely qualified to make." *Lewis v. Casey*, 518 U.S. 343, 385 (1996) (Thomas, J., concurring).

Congress intended the PLRA to require the district courts to better observe those limitations.

The PLRA preserves a district court's ability to impose or retain narrowly tailored remedies necessary to correct current and ongoing violations of inmates' constitutional rights, but simultaneously limits a court's ability to impose or retain remedies that are not necessary and narrowly tailored to correct constitutional violations. Congress's careful protection of state sovereignty in the PLRA is consistent with the Supreme Court's own caution in the prison conditions context:

> "[W]e have been vigilant in opposing sweeping remedial decrees in the context of prison administration. 'It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.' *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 [] (1973). In this area, perhaps more than any

other, we have been faithful to the principles of federalism and separation of powers that limit the Federal Judiciary's exercise of its equitable powers in all instances." *Lewis*, 518 U.S. at 386 (Thomas, J., concurring).

The PLRA automatic stay is an integral part of Congress's design to limit federal court intrusions into state sovereignty to those necessary to remedy constitutional violations. The automatic stay does not affect the substantive standards district courts are to apply under the PLRA, but it was clearly intended to encourage the courts to "promptly rule" on termination motions by declaring that failure to do so will result in a temporary stay of any continuing prospective relief. *See* 143 CONG. REC. S12,269 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) (stating that Congress intended the automatic stay "to discourage delay"); H.R. REP. NO. 21, 104th Cong., 1st Sess. 26 (1995) (stating that with the automatic stay "judges will be motivated to decide the motions [to terminate] and avoid having the stay automatically take effect"). That legislative goal is both laudatory and constitutionally permissible. Because §3626(e) works only a temporary stay of the existing relief and does not directly and permanently terminate the relief without reference to appropriate legal standards, it does not violate the separation-of-powers doctrine.

I. DISTRICT COURTS DO NOT HAVE INHERENT EQUITABLE POWERS TO STAY A CONGRESSIONALLY IMPOSED AUTOMATIC STAY OF PROSPECTIVE RELIEF.

The federal courts have inherent equitable powers, but the exercise of those inherent powers can be limited by statute.[4] The power of courts to issue injunctions, the most fundamental of equitable powers, is limited by FED. R. CIV. P. 65(b) and other laws.[5] Congress has the power and authority to modify the courts' equitable powers, and that power is an essential part of the checks and balances that are the very core of separation of powers.

Courts' equitable powers are particularly subject to congressional control and modification when they have the potential to interfere with principles of federalism in our system of dual government. "As part of the delicate adjustments required by our federalism, Congress has rigorously controlled the 'inferior courts' in their relation to the courts of the states. . . . We must be scrupulous in our regard for the limits within which Congress has confined the authority of its own creation." *Toucey v. New York Life Ins.*

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4. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991).

5. *See, e.g., Lauf v. Shinner*, 303 U.S. 323, 327 (1938) (holding that the district court erred by granting an injunction in the absence of findings made prerequisite to jurisdiction by Norris-La Guardia Act); Judiciary Act of 1793, §5, 1 Stat. 335 ("nor shall a writ of injunction be granted (by any court of the United States) to stay proceedings in any court of a state"). The PLRA was "[f]ormulated as a contraction of the federal courts' equity jurisdiction" and is not an "isolated instance of withholding from the federal courts equity powers possessed by Anglo-American courts." *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 130 n.2, 147-48 (1941).

Co., 314 U.S. 118, 147-48 (1941). "The special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law has been an historic concern of congressional enactment." *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951). Although some courts, including the Fifth and Sixth Circuits in this context, have insisted that Congress may limit the courts' equitable powers only by a clear legislative command,[6] *amici* are doubtful that Congress has any greater burden of clarity in this area than in any other area in which it legislates.

In any event, the PLRA's automatic stay in §3626(e) is an exceptionally clear legislative command, and its language makes clear that Congress intended the stay to be mandatory and not subject to an equitable stay by a district court. The unambiguous language of the statute declares that a motion to terminate "*shall* operate as a stay" of all prospective relief thirty days after the motion to terminate is filed until the court rules on the motion. If there was any doubt about Congress's intent in using the word "shall," the 1997 amendments further clarified that the automatic stay was not intended to be discretionary. In November 1997, §3626(e)(3) was amended

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6. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) ("Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.'" (citing *Brown v. Swann*, 35 U.S. (10 Pet.) 497, 503 (1836)).

to allow a one-time, sixty-day delay of the automatic stay. If Congress believed that courts already had authority to stay the stay, it would not have thought it necessary to respond to concerns that 30 days was not enough time to rule on motions to terminate, and it certainly would not have expressly provided a 60-day statutory stay of the stay. There was no need for the amendments if courts could already stay the automatic stay. As the Seventh Circuit summarized: "Even though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than that." *French v. Duckworth*, 178 F.3d 437, 443 (CA7 1999).

The Seventh Circuit split with the Fifth Circuit and the Sixth Circuit on the issue of whether district courts "retain" inherent equitable power to "stay the stay." The three majority opinions and the dissenting opinions from the Sixth and Seventh Circuits illustrate the three approaches courts have taken to the automatic stay provision.

The first approach was taken by the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925 (CA6 1998), and adopted by the Fifth Circuit in *Ruiz v. Johnson*, 178 F.3d 385 (CA5 1999). *Hadix* asserted that Congress may modify the courts' inherent equitable powers only by clear command and that ambiguous statutes should be interpreted in a manner consistent with the Constitution if possible. *Hadix* incorrectly held that the automatic stay does not clearly modify inherent equitable powers and that courts "retained" equitable power to stay the automatic stay. *Hadix*, 144 F.3d at 944-46. The Sixth Circuit further justified its decision by declaring that the automatic stay provision, if read literally, would unconstitutionally violate separation of powers in the absence of a court's

inherent power to stay the automatic stay. *Id.* at 942-44. The Fifth Circuit in *Ruiz* similarly interpreted the automatic stay to permit a court to stay the stay, but did not address whether the automatic stay provision would be constitutional as written. *Ruiz*, 178 F.3d at 396.

The second approach, represented by the majority in this case, is that the PLRA does not allow courts any discretion to stay the automatic stay and that the PLRA therefore violates the Constitution. *French*, 178 F.3d at 443. The *French* majority ruled that Congress had clearly modified the lower courts' inherent equitable powers and taken away any ability to "stay the stay," thus violating separation of powers. *French*, 178 F.3d at 443-44.

The third (and correct) approach—represented by Judge Norris, concurring and dissenting in *Hadix*, and by Judges Easterbrook, Posner, and Manion, dissenting from the denial of rehearing *en banc* in *French*, is similar to the second in that both view the PLRA as not leaving courts any inherent power to "stay the stay," but it recognizes that the automatic stay, even as literally construed, does not violate separation of powers. *Hadix*, 144 F.3d at 950 (Norris, J., concurring and dissenting); *French*, 178 F.3d at 448 (Easterbrook, Posner, and Manion, JJ., dissenting from denial of rehearing *en banc*).

Without focusing on the text that Congress actually enacted, the Fifth and Sixth Circuits improperly attempted to avoid the separation of powers question by suggesting that they were duty-bound to adopt an interpretation of the automatic stay that did not raise a constitutional question. *See NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937) ("As between two possible interpretations of a statute, by one

of which it would be unconstitutional and by the other valid, [a court's] plain duty is to adopt that which will save the act."). However, a court's duty to avoid constitutional questions is not unlimited, and "a court may not exercise legislative functions to save the law from conflict with constitutional limitation."[7] Courts must construe statutes consistent with the Constitution, if the language will bear that construction, but "[c]ourts cannot redraft statutes so that they read the way Congress might have written them, or should have written them." *French*, 178 F.3d at 442. Because the PLRA's automatic stay cannot reasonably be read as a permissive stay, a court may not misconstrue the statute simply to avoid a constitutional question.

The Fifth and Sixth Circuits also erroneously relied on §3626(e)(4), which makes orders staying or otherwise barring the automatic stay automatically appealable. The fact that Congress ensured that such orders would be appealable does not suggest that Congress wanted courts to stay or bar the automatic stay. To the contrary, that Congress permitted an appeal only from orders interfering with the automatic stay—and not from the automatic stay itself—strongly suggests that the appeal provision was intended to discourage orders blocking the automatic stay.

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7. *Lowe v. SEC*, 472 U.S. 181, 212 (1985) (White, J., concurring) (citing *Yu Cong Eng'g v. Trinidad*, 271 U.S. 500, 518 (1927)); *see also Crowell v. Benson*, 285 U.S. 22, 76-77 (1932) (Brandeis, J., dissenting) ("The court may not, in order to avoid holding a statute unconstitutional, engraft upon it an exception or other provision. . . . Neither may it do so to avoid having to resolve a constitutional doubt.").

Section 3626(e)(4) cannot support an inherent power rationale because the courts' reliance on the addition of (e)(4) as part of the 1997 amendments presupposes that the "inherent" power did not exist before November 1997 and, therefore, was not inherent at all. There is a simpler and more logical explanation for (e)(4). Prior to the 1997 amendments, if a district court were to issue a temporary restraining order or other injunction that prevented the automatic stay provision from going into effect, as happened initially in *French*, the prison system could challenge the district court's ruling through an interlocutory appeal, pursuant to 28 U.S.C. §1292(a)(1). But if the district court instead held the automatic stay unconstitutional, as later happened in *French*, *Hadix*, and *Ruiz*, a prison system would not be able to challenge that ruling by interlocutory appeal.[8]

By November 1997, the district courts in *Hadix*, *French*, and *Ruiz* had all issued unappealable orders holding the automatic stay provision unconstitutional.[9] By enacting

8. In *Hadix*, for example, prior to the November 1997 amendment, the prisoner class argued on appeal that the district court's orders holding the automatic stay unconstitutional were not appealable interlocutory orders and that the Sixth Circuit therefore lacked jurisdiction to hear the prison system's appeal of the district court's order finding the automatic stay provision unconstitutional. *Hadix*, 144 F.3d at 936.

9. *French*, 178 F.3d at 440-41; *Hadix v. Johnson*, 933 F.Supp. 1360 (E.D. Mich. 1996); *Hadix v. Johnson*, 933 F.Supp. 1362 (W.D. Mich. 1996) (demonstrating that orders finding the automatic stay provision unconstitutional were signed on July 11, 1997; July 5, 1996; and July 3, 1996 respectively). The district court in *Ruiz* signed an order on September 25, 1996, declaring the automatic stay provision unconstitutional.

(e)(4), Congress intended only to permit an immediate appeal of the kinds of orders that courts were already entering. Contrary to *Hadix*'s suggestion that Congress enacted (e)(4) in an effort to allow courts to stay the stay, Congress in fact enacted it for exactly the opposite purpose.[10] It is ironic that Congress's effort to provide a means to appeal erroneous district court orders invalidating the automatic stay has been construed as essentially legitimizing those orders.

Nor is there significance in the distinction between §3626(e)(1)'s provision for mandamus review of a district court's refusal to rule promptly on a motion to terminate and §3626(e)(4)'s provision for interlocutory appeal of a district court's blocking of the automatic stay. There is nothing to appeal when a court refuses to rule promptly on a motion, and *only* mandamus can be used to challenge a court's refusal to rule. Properly construed, (e)(1) and (e)(4) work in tandem to provide appellate relief for anticipated district court errors that would delay the resolution of PLRA motions to terminate.

The PLRA's automatic stay cannot fairly be read to allow district courts to stay the stay and the Fifth and Sixth Circuits erred in ruling otherwise. The text and structure of §3626(e) clearly express Congress's intent to impose an automatic stay not subject to equitable delay. Allowing courts to stay the stay undermines congressional intent to require courts to rule

10. *See* 143 CONG. REC. S12,269 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) ("The amendments also clarify that the stay is in fact automatic by expressly modeling it on the bankruptcy automatic stay, and they state explicitly that any order blocking the automatic stay is appealable, thereby securing review of the district court's action.").

promptly on whether their orders governing state prison systems meet the valid requirements of the PLRA.

II. THE AUTOMATIC STAY PROVISION DOES NOT VIOLATE SEPARATION OF POWERS.

The PLRA's automatic stay is a procedural mechanism, designed to encourage district courts to promptly address the merits of PLRA termination motions, that does not violate the separation of powers doctrine. The PLRA generally authorizes defendants in prison conditions lawsuits to obtain "immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct a violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. §3626(b)(2). The district court may refuse to terminate jurisdiction only if it makes written findings that the relief meets those standards. §3626(b)(3). In other words, to better balance federalism and separation of powers concerns, Congress removed the district courts' equitable powers to order injunctive relief beyond that necessary and narrowly tailored to remedy constitutional violations.[11]

The Court had previously held that a district court could, with a state's consent, order relief broader than what was necessary and narrowly tailored to correct a constitutional

11. *See Plyler v. Moore*, 100 F.3d 365, 374 (CA4 1996) ("Congress has a legitimate interest in preserving state sovereignty by protecting states from overzealous supervision by the federal courts in the area of prison conditions litigation.").

violation. *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 389 (1992). But the PLRA modifies the Court's decision in *Rufo* by declaring that district courts may no longer grant or maintain broader relief—even if the state consents, as *Rufo* had permitted. Since the PLRA's enactment, whether consensual or not,

> "federal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation, or if they are imposed upon governmental units that were neither involved in nor affected by the constitutional violation." *Milliken v. Bradley*, 433 U.S. 267, 281-82 (1977).

By that limitation, the PLRA's termination provisions restrict the district courts' equitable authority to issue or continue injunctions that go beyond the (b)(3) restrictions. *See Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 185 (CA3 1999). Although relatively few courts have dealt with separation-of-powers challenges to the automatic stay, the termination provisions have been attacked numerous times as an unconstitutional violation of the principle of separation of powers, but every circuit to expressly consider the constitutionality of the PLRA's termination provisions has upheld them.[12]

12. *See Cagle v. Hutto*, 177 F.3d 253, 256 (CA4 1999); *Nichols v. Hopper*, 173 F.3d 820, 821-25 (CA11 1999); *Benjamin v. Jacobson*,

The analysis of those courts is instructive and should be dispositive of the separation-of-powers challenge in this case. If there is no separation-of-powers violation in the statutory command that a district court lacks discretion to retain—and must terminate—prospective relief that does not satisfy (b)(3), as numerous courts have held, then a related provision that merely stays the effect of that prospective relief temporarily while the district court decides whether it must terminate the relief should not pose any separation-of-powers difficulty.

The Seventh Circuit erroneously ruled that the automatic stay provision contravenes *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), which held that Congress violates separation of powers when it prescribes a rule of decision to courts in pending cases. The automatic stay does not prescribe any ruling at all—it only stays prospective relief until the district court rules on the merits of the PLRA

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172 F.3d 144, 149-50 (CA2) (en banc), *cert. denied sub nom., Benjamin v. Kerik*, 120 S.Ct. 72 (1999); *Ridge*, 169 F.3d at 182-83; *Hadix v. Johnson*, 133 F.3d 940, 943-45 (CA6), *cert. denied sub nom., Hadix v. McGinnis*, 118 S.Ct. 2368 (1998); *Dougan v. Singletary*, 129 F.3d 1424, 1426-27 (CA11 1997), *cert. denied*, 118 S.Ct. 2375 (1998); *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649 (CA1 1997), *cert. denied*, 118 S.Ct. 2366 (1998); *Gavin v. Branstad*, 122 F.3d 1081, 1087 (CA8 1997), *cert. denied*, 118 S.Ct. 2374 (1998); *Plyler v. Moore*, 100 F.3d 365, 371 (CA4 1996), *cert. denied*, 117 S.Ct. 2460 (1997). Although a panel of the Ninth Circuit initially struck down §3626(b), *Taylor v. United States*, 143 F.3d 1178 (CA9), *reh'g granted and opinion withdrawn*, 158 F.3d 1059 (CA9 1999) (en banc), the *en banc* court held that the judgment in question had no prospective effects and that the §3626(b) motion to terminate was therefore moot. *Taylor v. United States*, 181 F.3d 1017, 1017 (CA9 1999) (en banc).

termination motion.[13] As noted, §3626(b), not §3626(e), establishes the substantive standards district courts must apply in determining whether to terminate prospective relief, and those standards have been repeatedly upheld against constitutional challenge. Section 3626(e) merely encourages district courts to rule promptly on termination motions and—to enforce that legislatively established deadline—provides that continuing prospective relief will be temporarily stayed until the court rules on the termination motion.

Klein does not even apply when Congress amends applicable law, as it did with the PLRA. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995). It has long been clear that Congress may change the law underlying equitable relief, even if the change is specifically targeted and limited in applicability to a particular injunction, and even if the change necessarily results in the lifting of the injunction. *See Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 437 (1992); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 431-32 (1855). Legislation that "alter[s] the prospective effect of injunctions entered by Article III courts" does not violate separation of powers. *Plaut*, 514 U.S. at 232. If a permanent alteration of the prospective effect of an injunction does not implicate separation of powers, then

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13. *See* 143 CONG. REC. S12,269 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham) ("The argument that the court is being forced to rule on anything on an unrealistic timetable is incorrect because the automatic stay imposes no requirement that they rule. It only provides that if they do not rule there is no order in effect until they do so.").

neither should the temporary alteration caused by the automatic stay.

This Court has never held or even suggested that a temporary stay of prospective injunctive relief could violate separation of powers principles.[14] The PLRA's automatic stay provision shares many common characteristics with well-known and accepted automatic stay procedures that have never been thought to be unconstitutional. For instance, if the PLRA's automatic stay is unconstitutional, then the Bankruptcy Code's automatic stay, 11 U.S.C. §362, must also be unconstitutional. The bankruptcy stay provides, in part, that the mere filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . the enforcement, against the debtor or property of the estate, of a judgment obtained before the commencement of the case." Consequently, a defendant with numerous "final judgments" against it can obtain an automatic stay of those judgments simply by filing a bankruptcy petition.

Unlike the PLRA automatic stay, which is not immediate and only takes effect if the district court delays its own decision, the bankruptcy automatic stay is effective immediately and depends on neither action nor inaction by the district court. Moreover, unlike the PLRA stay, which the district court can lift by making the findings required by §3626(b), the court that enters a judgment subject to the bankruptcy automatic stay is powerless to enforce that

14. *Amici* believe the Congress could easily have limited directly the duration of any injunctive relief imposed in prison conditions cases and that the temporary stay Congress actually enacted easily passes constitutional review.

judgment until the bankruptcy court acts to lift the stay. The bankruptcy stay is more far-reaching and onerous than the PLRA's automatic stay, yet the Court upheld the constitutionality of the bankruptcy stay long ago, *Kalb v. Feuerstein*, 308 U.S. 433, 438-39 (1940), and no one thinks that it violates separation of powers.

Another example of a valid automatic stay is FED. R. CIV. P. 62,[15] which entitles a party appealing a valid final money judgment to an automatic stay of the judgment upon posting a supersedeas bond.[16] A judgment debtor's right to secure the automatic stay of Rule 62 is absolute and nondiscretionary. Even if the district court has entered a valid final judgment, the judgment debtor may secure an automatic stay of that judgment merely by filing an adequate bond with the clerk. Like a bankruptcy stay, a Rule 62 stay is effective immediately. Both stays are stricter than the PLRA's automatic stay. All three are constitutional.

There are numerous other statutory deadlines that require a court to act by a certain time. Rule 65(b) limits a temporary restraining order to 10 days (with a single extension allowed for another ten days). As Judge Easterbrook pointed out:

15. Although Rule 62 is a rule of civil procedure and not a statute, it still has the force of law because it was promulgated under the authority of the Rules Enabling Act, 28 U.S.C. §2072. *In re Guthrie*, 733 F.2d 634, 637 (CA4 1984).

16. *Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (CA5 1992); *Cinerama, Inc. v. Sweet Music, S.A.*, 482 F.2d 66, 68 (CA2 1973).

> "Just as [§3626(e)(2)] causes an injunction to lapse unless the judge makes findings within 30 (or 90) days, so Rule 65(b) causes an injunction to lapse unless the judge makes findings within 10 (or 20) days. No one thinks that Rule 65(b) is an unconstitutional intrusion on the way judges manage their business; instead it protects defendants against unwarranted judicial interference. Just so with §3626(e)(2): It ensures that state and local governments are not burdened by federal control of their institutions for longer than is necessary." *French*, 178 F.2d 437, 449 (Easterbrook, J., dissenting from denial of rehearing *en banc*).

Judge Easterbrook described other deadlines that do not violate separation of powers. The Speedy Trial Act requires a court to try defendants within 70 days or dismiss the indictment.[17] Appeals by persons incarcerated for contempt

17. 18 U.S.C. §§3161, 3162(a)(2). The Fourth Circuit upheld the constitutionality of this statute against a separation of powers argument. *United States v. Bramer*, 691 F.2d 691, 695-96 (CA4 1982) ("*Klein* is nevertheless inapposite, since the Speedy Trial Act lays down no 'rules of decision,' but only rules of practice and procedure. Many cases have upheld the power of Congress to prescribe rules of practice and procedure for the federal courts. As a matter of facial constitutionality, we see no difference between the time constraints and dismissal sanction of the Speedy Trial Act and the host of other procedural requirements of unquestioned validity by which Congress regulates the courts of its creation—such measures as the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, the Federal Rules of Evidence, and statutes prescribing who may sue and where and for what (citations omitted).").

of a grand jury must be decided within 30 days.[18] A court of appeals must grant or deny, within 30 days, an application for to leave to commence a second or successive collateral attack.[19] Judge Easterbrook addressed numerous other time deadlines in criminal cases.[20]

The real objection to the automatic stay provision is that it gives a court only 30 (or 90) days to rule on a motion to terminate before the stay takes effect. But that is not a separation of powers concern. Even if Congress had directly required the district courts to rule on termination motions within a certain time period, that would not implicate the separation of powers doctrine. The PLRA automatic stay leaves the judicial decision in the hands of the judiciary and does not require a specific result in any given case. Even if the stay takes effect, the court retains the ability to terminate the stay simply by ruling on the motion to terminate.

The PLRA automatic stay is Congress's attempt to force reluctant district courts to apply the PLRA. It is especially ironic when those very courts hold that the attempt violates separation of powers. As one commentator put it,

> "Separation of powers was designed to restrain bad men and excessively zealous good men; the bench surely has some of each. Isn't there potential for abuse when one life-tenured judge tries to run an entire prison system, housing authority, or school

18. 28 U.S.C. §1826(b).

19. 28 U.S.C. §2244(b)(3)(D).

20. *French*, 178 F.3d at 452-53 (Easterbrook, J., dissenting from denial of rehearing *en banc*).

> district? . . . Are appellate review, the pressure of public opinion, and the theoretical threat of impeachment sufficient safeguards?" DOUGLAS LAYCOCK, MODERN AMERICAN REMEDIES 307 (2d ed. 1994).

The automatic stay is constitutional. The Court should reverse the judgment of the Seventh Circuit. The Court should reaffirm Congress's role in protecting the principles of separation of powers and federalism that are threatened in all institutional reform cases with seemingly permanent, minutely detailed control of state institutions by the federal courts.

CONCLUSION

For these reasons, the Court should reverse the judgment of the Seventh Circuit holding that the PLRA's automatic stay provision violates separation of powers.

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